

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition)
for Modification of Probation of:)
MICHAEL CHI-WAI WONG, M.D.)
4282 Genesee Ave., Suite 201)
San Diego, CA 92117)
Certificate No. G34771)
Petitioner.)
_____)


OAH No. N-10141

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on May 9, 1994.

IT IS SO ORDERED April 7, 1994.

Alan E. Brader 

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Petitioner.)	
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PROPOSED DECISION

On November 18, 1993, in Sacramento, California, M. Amanda Behe, Administrative Law Judge, Office of Administrative Hearings, heard this matter.

Gail Heppell, Deputy Attorney General, represented the Medical Board of California.

Petitioner was present and represented by Robert Hoad, Attorney at Law.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Michael Chi-Wai Wong, M.D., (hereinafter "petitioner") filed a Petition for Modification of Probation with the Medical Board of California (hereinafter "the Board") which he signed on February 26, 1993.

II

Petitioner was issued Physician's and Surgeon's Certificate No. G34771 on July 1, 1977.

III

On December 1, 1988, Accusation No. D-3878 was filed against petitioner alleging violations of Business and Professions Code sections 2227, 2234(e) (unprofessional conduct - dishonesty), and 2236 (unprofessional conduct - conviction of any offense substantially related to the qualifications, functions or duties of a physician and surgeon).

Effective October 23, 1989, that certificate was disciplined by Board Decision D-3878. That Decision adopted a STIPULATION signed by petitioner, who was represented by his current counsel in the defense of the Accusation, including the STIPULATION.

By that STIPULATION petitioner admitted every allegation of the Accusation including the following:

"Respondent Michael Chi-Wai Wong, M.D. is subject to disciplinary action pursuant to Sections 2234(d) and 2236, in that he has been convicted following his plea of nolo contendere to a crime of dishonesty, which is substantially related to the qualifications, functions, or duties of a physician, as more particularly alleged hereinafter:

- "a. On or about September 25, 1987, in a criminal proceeding before the Municipal Court of San Diego Judicial District, County of San Diego, entitled 'The People of the State of California vs. Michael Chi-Wai Wong, Defendant', Case No. M533678, respondent pleaded nolo contendere to commission of the offense of violation of Welfare and Institutions Code section 14107, which had been pleaded as Count I in a misdemeanor complaint filed before that Court.
- "b. On the date alleged in paragraph a., supra, in the above action, the Court ordered that imposition of sentence be suspended for three years, defendant pay a fine of \$1,000 including penalty, plus \$30 administrative fee, complete 250 hours of volunteer work, make restitution in the sum of \$5,000, and violate no same or similar laws.

"c. The facts of the case, as set forth in the misdemeanor complaint, to which the nolo contender plea was had, as alleged, supra, are that on or about July 7, 1986, respondent wilfully, unlawfully, and with intent to defraud, presented to Computer Sciences Corporation and the State of California for allowance or payment a false or fraudulent Medi-Cal claim for furnishing services in violation of Welfare & Institutions Code section 14107, per Penal Code section 17(b), a misdemeanor."

By that STIPULATION petitioner and the Board agreed that cause for discipline of his license was established pursuant to Business and Professions Code sections 2227, 2234(e), and 2236. The STIPULATION provided for the following discipline of petitioner's license:

"Physician's and Surgeon's Certificate No. G34771 ... is revoked. However, revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

"(1) As part of probation, respondent is suspended from the practice of medicine for sixty (60) days ...

"(2) Within ninety (90) days of the date of execution of the Order approving this stipulation ... respondent shall take and pass an oral or written examination in the subject of obstetrics and gynecology. ..."

Petitioner was also required by the STIPULATION to complete on an annual basis an approved education program or course of not less than twenty-five hours per year, and complete a course in Ethics.

IV

Petitioner maintains a solo practice specializing in OB/GYN in the San Diego area. Petitioner holds full hospital privileges at Sharp Memorial, Mercy, Mission Bay, and Harborview Hospitals.

Petitioner testified that he has "paid severely for" his mistakes, and taken steps to assure that billing errors will not recur. He complied with the terms of his criminal probation, and has since been permitted to change his plea and the criminal complaint was dismissed.

Petitioner finds that he cannot obtain a Medicare number or a Medi-Cal number until his probation is completed. He opines

that "significant changes in health care make it necessary for [him] to join provider organizations" and insurance company preferred provider organizations are disinclined to associate licensees on probation.

Petitioner is current with all requirements of his Board probation. Two medical negligence cases are outstanding against petitioner; they were filed at approximately the time petitioner submitted the subject Petition to the Board.

The conviction and underlying fraudulent billing which resulted in the discipline of petitioner's license was a very serious matter which merited all of the terms of discipline imposed, including the length of probationary period. Petitioner failed to establish by a preponderance of the evidence that the probationary period to which he stipulated in 1989 should now be changed. Moreover, the public interest would be aided by continuation of the requirement for further medical education.

V

The letters of three physicians presented by petitioner have been considered in the Order herein.

DETERMINATION OF ISSUES

I

The Medical Practice Act, Business and Professions Code section 2307, provides that in the subject hearing all of the following may be considered:

"... all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability."

II

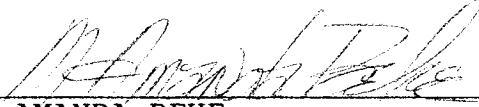
Petitioner has the burden of proving by a preponderance of the evidence that his petition should be granted. Petitioner has not met his burden of proof. The basis for the discipline of petitioner's certificate was serious and significant. Petitioner does not demonstrate any rehabilitation which would justify shortening the period of probation required by the STIPULATION to which he agreed.

ORDER

The Petition is denied.

Dated:

January 18, 1974



M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings